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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,936	01/18/2001	Roland Eberlein	4965-000114	9936

21874 7590 07/13/2004

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EXAMINER

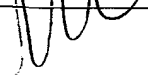
ODLAND, KATHRYN P

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/764,936	<b>Applicant(s)</b> EBERLEIN ET AL. 	
	<b>Examiner</b> Kathryn Odland	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004 and 01 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

This is a response to the After Final Amendments dated May 6, 2004 and June 1, 2004. Claims 1-4 and 6-14 are pending. Claim 14 remains withdrawn.

1. In light of newly found art, applicant's request for reconsideration of the finality of the rejection of the last Office action is granted and, therefore, the finality of that action is withdrawn.

### ***Election/Restrictions***

Applicant has argued the withdrawal of claim 14. However, claim 14 clearly claims a bearing, which is depicted in Figure 6, a non-elected species. Thus, claim 14 is withdrawn from consideration.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 102(a and/or e) as being anticipated by Bono in US Patent No. 5,954,722.

Regarding claim 1, Bono discloses a fastening assembly having a fixing element (such as 10, 110) to be fastened to a substructure where the fixing element has at least one bore (such as 14), as seen in figure 6. There is at least one screw (such as 18) which can be passed through the at least one bore of the fixing element (10, 110), and which can be screwed into the substructure, the screw having a shaft and a head, as seen in figures 5-6. There is at least one bushing (16) arranged in the at least bore (14), through which the screw (18) can be passed for screwing the screw into the substructure. Further, the bushing is able to swivel in several spacial directions when seated in the bore and the bushing has a seat for at least partially receiving at least a partial surface of the head of the screw, as recited in columns 4-5 and seen in figures 5-8. An inner surface of the bore and an outer surface of the bushing are formed to be about spherically curved (column 4, lines 35-45), such that a region of largest diameter of the inner surface and the outer surface is situated between an upper edge and a lower edge of the bore, and the bushing is loss-proof pressed in the bore, as recited in columns 4-6 and seen in figure 6. Furthermore, it can be considered that the bushing is "loss-proof" since the current application specification does not define "loss-proof."

Regarding claim 2, Bono discloses that as applied to claim 1, as well as, a symmetry axis of the bushing that can be swiveled preferably over an entire azimuth angle of 360.degree. in an angular range of 0.degree. to at least 45.degree. with respect to a symmetry axis of the bore, as discussed in columns 4-6 and seen in figure 6.

Regarding claim 3, Bono discloses that as applied to claim 1, as well as, a bushing that is mounted directly in the bore, as seen in figure 6.

Regarding claim 4, Bono discloses that as applied to claim 3, as well as, a bushing that is received in the bore in form-locking manner, as recited in columns 4-6. It can be considered that the bushing is "form-locking" since the current application specification does not define "form-locking."

Regarding claim 6, Bono discloses that as applied to claim 1, as well as, a head of the screw and the seat of the bushing form a substantially form-locking connection, as recited in columns 4-6. It can be considered that the bushing is "form-locking" since the current application specification does not define "form-locking."

Regarding claim 7, Bono discloses that as applied to claim 1, as well as, a head of the screw and the seat of the bushing are formed conically to be complimentary to one another, recited in columns 4-6.

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Regarding claim 8, Bono discloses that as applied to claim 1, as well as, an upper edge of the seat of the bushing that is rounded, as recited in columns 4-6 and seen in figure 6, for example. The claim does not limit the direction in which the bushing is rounded.

Regarding claim 9, Bono discloses that as applied to claim 1, as well as, a periphery of the head of the screw is configured as a support surface, which in the tightened condition of the screw rests against a support surface of the bushing formed to be approximately complimentary to the support surface of the head, as recited in columns 4-6 and seen in figure 6.

Regarding claim 10, Bono discloses that as applied to claim 1, as well as, a bushing (16) that has **approximately** the same height as the bore, and wherein the head of the screw has approximately the same height as the seat of the bushing, as seen in figure 6.

Regarding claim 11, Bono discloses that as applied to claim 1, as well as, a bushing (16) that is integrally formed of **metal** or of synthetic material, or comprises a metal body with the seat of the bushing then being at least partially coated with synthetic material, as recited in column 4, lines 30-35.

Regarding claim 12, Bono discloses that as applied to claim 1. Further, claim 12 is intended use. Nonetheless, Bono discloses securing a bone fracture in a human body, wherein the fixing element is a rigid plate or a rigid brace and the at least one screw is a bone screw, as discussed throughout the Bono reference.

5. Claim 13 is rejected under 35 U.S.C. 102(a and/or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bono in US Patent No. 5,954,722.

Regarding claim 13, Bono discloses that as applied to claim 1. However, claim 13 is directed to intended use. Nonetheless, the device of Bono is capable of being used for mounting an object on a wall, wherein the fixing element is comprised in the group of a wall fixture, a profile or the like, or for assembling furniture or the like, wherein the fixing element is comprised in the group of an armature, a hinge, an angle or the like. Moreover, it is considered an equivalent to use as a bone fracture element. The specification does not recited the criticality of the invention in use in any particular way, therefore, the intended use is not given patentable weight for it does not define structure.

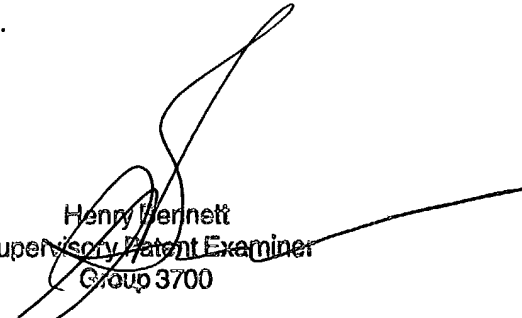
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO

  
Henry A Bennett  
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Group 3700